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In The

Supreme Court of the United States

October Term, 1975

No. 75-155

JAMES V. LARKIN, DOMINICK VENTRE, FRANK CHILLEMI, GERALD KATZ, ET AL.,

Petitioners,

vs.

JOHN R. PATTERSON, NEWSPAPER AND MAIL DELIVERERS UNION OF NEW YORK AND VICINITY, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, NEW YORK DAILY NEWS, NEW YORK TIMES, ET AL.,

Respondents.

REPLY BRIEF

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QUESTIONS PRESENTED:

1. In an action based on Title VII, where both minority and non-minority workers are subjected to identical employment discrimination, is a District Court prohibited from granting equal relief to all discriminatees, regardless of race?

2. Whether Congress intended through Title VII to grant constructive seniority to newly hired minority individuals to the detriment of incumbent non-minority employees?

ARGUMENT

Reply to Brief in Opposition to Certiorari

When non-minority workers are subjected to the same unfair treatment as minorities, are they also entitled to the same relief? This is the issue presented for review. It affects every employee in our nation whose industry is governed by a Title VII affirmative action program.

Both black and white non-union workers were victims of identical discriminatory employment practices (Brief In Opposition To Certiorari page 4—Op. Br. p. 4; Petition For A Writ Of Certiorari 35a). Yet, Respondents have argued that under Title VII equally discriminated against white workers have no right to receive relief equal to that afforded minorities. They further maintain that *new* as well as incumbent minority workers must be given preferential treatment at the expense of these very same white discriminatees (Op. Br. p. 5).

This approach to the resolution of employment discrimination was never the intention of Congress or the Judiciary in the enactment, interpretation or implementation of Title VII.

In their Brief in Opposition to Certiorari, the Respondents have advanced positions which are in direct conflict with their statements in the record below. For example, Respondents would have

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this Court believe that this appeal is being advanced by a single petitioner (Op. Br. p.6). They neglect to note that when this particular petitioner sought class certification in the District Court, Respondents opposed the motion arguing:

> "... class action intervention serves no purpose not well protected by allowing, as the Court has done, intervention on an individual basis. ... The Court should deny Intervenor Larkin's motion to proceed on a class-wide basis, without restricting him from advancing arguments which he believes to be in the interests of other persons on the News' Group III list."

Furthermore, an application for a stay was made in the Court of Appeals (Op. Br. p.6). Respondents opposed this motion stating *inter alia* that there would be no irreparable harm to the Petitioners. Chief Judge Kaufman in denying the motion for a stay observed that if on appeal the Petitioners were successful, then employment priority lists could be revised and non-minority employees compensated for any financial loss.

Respondents cite several cases in support of the obvious statement that an affirmative cause of action is created under Title VII to remedy employment discrimination (Op. Br. p.7). Not one case stands for the proposition that equally mistreated workers should be denied equal remedial relief by a Court of Equity whose jurisdiction has been invoked under Title VII.

Petitioners are not challenging the affirmative action program which establishes quotas at entry level hiring (Op. Br. p. 8). At issue herein are those provisions of the affirmative action program which grant fictional seniority to newly hired minority workers to the detriment of white workers who have also been victims of the same employment discrimination. There has never been a judicially sanctioned affirmative action program wherein non-minority discriminatees have been denied equal relief.

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Finally, acknowledging that the Petitioners' seniority rights, etc., have been interfered with, the Respondents seek to justify their action upon the ground that a labor agreement could be modified by the Union and Employer (Op. Br. p. 9). However, a labor agreement predicated upon racial considerations is not permissible under Title VII.

CONCLUSION

It is respectfully submitted that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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